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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERND KLOTZ

Appeal No. 2009-013486
Application No. 10/789,412
Technology Center 1700

Oral Hearing Held: March 10, 2010

Before JEFFREY T. SMITH, LINDA M. GAUDETTE, and JEFFREY B. ROBERTSON, *Administrative Patent Judges.*

ON BEHALF OF THE APPELLANT:

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JUDGE SMITH: Good morning.

MR. FEIEREISEN: Good morning. My name is Henry Feiereisen. I'm calling regarding Appeal Number 2009-013486.

JUDGE SMITH: You've reached a hearing room at the Board. Today your panel is Linda Gaudette, Jeffrey Smith, and Jeffrey Robertson.

MR. FEIEREISEN: Okay.

JUDGE SMITH: We're the judges presiding over the hearing for today.

MR. FEIEREISEN: Okay.

JUDGE SMITH: The proceedings today are being transcribed. We have a transcriber here who is recording the proceedings, and that will be entered into the record.

MR. FEIEREISEN: So you will transfer the call into the Board?

JUDGE SMITH: You actually are in the hearing room.

MR. FEIEREISEN: Oh, I am in the hearing room. Okay. Good. So shall I start?

JUDGE SMITH: Could you spell your last name for the record.

MR. FEIEREISEN: Yes. My name is Henry Feiereisen, F-E-I-E-R-E-I-S-E-N.

JUDGE SMITH: Thank you. You have 20 minutes to present your arguments, and you can begin when you're ready.

MR. FEIEREISEN: I am ready.

JUDGE SMITH: Okay.

MR. FEIEREISEN: Good morning. The Examiner in this case effectively ignored a key feature of Claim 1 that is missing in Takeda and by itself renders the rejection under 102 untenable.

The missing feature is the reference in Claim 1 to a positive mold, which is an established term in the art, to relate to a compression mold designed to trap all of the molding materials and thus to prevent escape of molding material during a molding cycle.

This definition of a positive mold is expressly adopted in Paragraph 19 of the specification, which reads that the use of generally known positive molds is preferred because their structure avoids escape of material from the mold even when a half mold moves.

That the Examiner failed to recognize this claim limitation is evidenced also by her statement in the Final Rejection, under the heading response to arguments, where she contended that the fact that Takeda discloses a return of material is inapposite because Claim 1 does not exclude such an extra step when, in fact, it does.

The Examiner failed to properly define the scope of the present invention, notwithstanding her incorrect assertion that the Takeda reference also involves a method using a positive mold.

Takeda expressly describes a molding operation in which material from the cavity returns to the material supply device side.

To read one of several passages -- Column 9, for example, lines 21 to 24 -- Takeda describes that excess resin inside the mold cavity returns to the runner through the still open gate, and/or flows out to the overflow portion so that the resin inside the mold assembly is returned to the cylinder body of the heated cylinder unit 1.

In other words, Takeda adjusts the amount of material in the cavity until the appropriate amount is contained in the cavity.

JUDGE SMITH: Excuse me, Mr. Feiereisen. Did you make this argument in your Brief?

MR. FEIEREISEN: I pressed these points, but I'm doing it from a different angle now. I mean, it was so clear to me that the positive mold that is in the claim language -- and I made that point on record before -- I just want to stress it in this argument in this hearing now because it is so clear that the positive mold is an established term; and it should be clear throughout the record.

JUDGE SMITH: You understand we are limited to the arguments that were presented in the Brief and that have been presented before the Examiner, don't you?

MR. FEIEREISEN: Yes, but those arguments were presented. That's why the Examiner in the Final Rejection referred to the point that we don't exclude that step that material can escape, and that's why Takeda reads on it. So that point was made.

I'm just pressing this point now from a little different angle to focus on the positive mold, but it's there.

Takeda adjusts the amount of material in the cavity until the appropriate amount is contained in the cavity, and in contrast thereto, Claim 1 sets for a complete filling of the cavity once the positive mold is closed, and adding additional material to expand the cavity to a size commensurate with a defined article thickness.

No material is returned or intended to escape. That point was made. It's on record.

Takeda differs also in other respects, which I'd briefly like to address here and which, again, in my view renders the rejection under 102 untenable.

With respect to the step of fully filling the cavity with plastic material while maintaining a size of the cavity constant, as set forth in Claim 1, the Examiner interprets the reference too in this condition in Takeda to mean a closed cavity. This is pure speculation.

Takeda merely states in Column 8, Lines 4 - 20, that during the filling phase pressure equilibrium exists between the applied light clamping force, and the biasing force of the spring.

While pressure equilibrium exists, this is the situation that is referred to here. The cavity is filled. There is no reference here that the cavity remains constant during the filling step.

In fact, it can be assumed that the cavity does not remain constant because concurrent with the filling step is a pressure-adjusting step during which material is continued to be forced by the screw into the cavity.

Takeda expressly states in Column 9, Lines 43-45, that the volume of the cavity is not constant at the completion of the pressure-adjusting step.

Therefore, there is no reason to believe that the cavity remains constant during the filling phase, and the reference to "in this situation" does not imply anything to the contrary.

JUDGE ROBERTSON: Mr. Feiereisen, this is Judge Robertson. I wanted to ask you a question about that because in the second step in the claim, the distend step --

MR. FEIEREISEN: Yes.

JUDGE ROBERTSON: In that step you have additional amounts of resin. Does that expand the cavity at that point?

MR. FEIEREISEN: The second step or the third where it says adding plastic materials so as to distend?

JUDGE ROBERTSON: Yes.

MR. FEIEREISEN: Yes. You start, you fill it. The cavity remains constant, then you add material -- again, no material escapes. It just goes to the size or will expand to the size that eventually or ultimately is commensurate with the wall thickness to be produced.

That's also another point I'd like to make where I think the Examiner is also incorrect.

I'm coming to this adding step also right now because I think Takeda lacks that adding step as set forth in Claim 1.

JUDGE ROBERTSON: Mr. Feiereisen, why wouldn't the pressure-adjusting step in Takeda -- why couldn't that be interpreted as an adding plastic material step as in the distend step in your claim?

MR. FEIEREISEN: Because in Takeda you add material but it's never in order to make the defined -- which is also in that step -- to make the defined article thickness.

The process in Takeda is different. You just add material but eventually, in order to get the correct amount in the cavity, you have to inject or return material from the cavity.

We inject more material into the cavity until it's the right amount to produce a defined wall thickness.

In other words, what we're doing is we inject material into the cavity to

produce the proper wall thickness, while in Takeda the proper amount of wall material is attained by ejecting. By removing material from the cavity.

JUDGE ROBERTSON: Okay.

MR. FEIEREISEN: That's why the reference to define is relevant because we inject, again, until it's a defined wall thickness. That's not the case that is shown in Takeda.

JUDGE SMITH: Which portion of your claim are you referring to regarding the wall thickness?

MR. FEIEREISEN: Article thickness. It says in the third step, adding plastic material so as to distend the positive mold in opposition to the clamping force, until the cavity of the positive mold expands to reach a defined size for producing a defined article thickness. That inherently refers to the wall thickness.

That's not in Takeda. When they inject, the cavity does not remain constant. It becomes constant only after the measuring step or the compression step when the movable and stationary molds abut one another and the gate is closed.

That's when the product is produced.

So the whole process in Takeda is totally different.

JUDGE ROBERTSON: Can I ask you what happens in the next step when you close the positive mold until reaching a residual distending opening.

MR. FEIEREISEN: Yeah.

JUDGE ROBERTSON: What happens to the material then? Does it just get compressed? Does any of it come out?

MR. FEIEREISEN: Yes, it's going to be compressed, I think, in Figure 3.

From Figure 2 to Figure 3, that's the compression step.
JUDGE ROBERTSON: Okay.
MR. FEIEREISEN: But you still leave that opening to have some kind of floating support. That's why they retain that distending opening there.
JUDGE ROBERTSON: 15?
MR. FEIEREISEN: 15, exactly.
But the material is the same.
JUDGE ROBERTSON: Okay.
MR. FEIEREISEN: There is no escape. Again, that's what a positive mold is all about. From that point of view, I think you cannot compare those two processes.
May I continue?
JUDGE ROBERTSON: Yes.
MR. FEIEREISEN: With the defined wall thickness -- article thickness I just mentioned -- the Examiner made another assertion that is simply ignorant of what Claim 1 sets forth. That refers to the residual distending opening reached and the plastic article is produced.
In other words, the plastic article is produced in the presence of the residual distending opening. In Takeda the actual production of the product is realized when the movable plate and the base member abut one another.
Let me just summarize five points I think Takeda differs from the present invention. Again, in Takeda, material escapes from the cavity and, thus, there's no positive mold involved.
In Takeda, the cavity is not filled while remaining constant in size. There is no expansion of the cavity to the actual article thickness.

The compression is implemented from the size of the cavity, which is greater than the actual product size or wall thickness.

In Takeda, the mold is closed until the movable plate and the base member of the fixed mold abut together for realizing the compression stroke. There is no residual distending opening as set forth in Claim 1.

So I do believe that these two processes are so different from one another that the rejection should be reversed. Thank you.

JUDGE SMITH: Thank you, Mr. Feiereisen.

Do you have any questions?

JUDGE GAUDETTE: No.

JUDGE ROBERTSON: No further questions.

JUDGE SMITH: We have no further questions, and we want to thank you for calling in today for the hearing.

As I said, the transcript will become part of the record, and you will be able to get it once it does.

MR. FEIEREISEN: Let me also thank you. This is the first time after so many other appeals that I tried this over the phone, for allowing me to do that. It's not something -- I mean I hope this over the telephone is acceptable to you, but that needed to be done in this situation.

JUDGE SMITH: Okay.

MR. FEIEREISEN: Thank you very much.

Whereupon, the proceedings at 9:15 a.m. were concluded.